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Supreme Court, U.S.
FILED

No. 091463

MAY 28 2010

OFFICE OF THE CLERK

In The

Supreme Court of the United States

DEBORAH A. MESSINA,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

DEBORAH A. MESSINA, pro se
10 Anchor Way
Berlin, Maryland 21811
(410) 213-1858

QUESTION PRESENTED FOR REVIEW

Whether the Petitioner is prevented from availing herself of her due process rights as a result of the complex nature of the tax laws and procedures involved coupled with the lack of availability of any kind of legal advice/assistance in situations like hers at all stages of these proceedings.

LIST OF PARTIES

Deborah A. Messina, pro se
Commissioner of Internal Revenue

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The opinions are not published by the United States Court of Appeals for the Fourth Circuit. The opinions are not published by the United States Tax Court.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit filed its Judgment on October 8, 2009, and entered an order denying petitioner's motion for rehearing on December 29, 2009. The Court granted an extension of time "to and including May 28, 2010". This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decision on a writ of certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution – 5th Amendment –

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be

> deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF FACTS

This case began with Internal Revenue Service hearings concerning my 1994 income tax; proceeded to U.S. Tax Court; to the U.S. Court of Appeals for the Fourth Circuit; back to the U.S. Tax Court and the IRS as a result of a partial remand; back to the U.S. Tax Court; and back to the U.S. Court of Appeals for the Fourth Circuit. It has been handled pro se the entire time, although the Petitioner repeatedly attempted to get legal assistance and/or advice from any and all possible sources. The Petitioner has expressed concern repeatedly in various documents and in letters to the Clerks of the Courts (none of which ever received a response) that she did not have the legal ability to do what was necessary to avail herself of her right to due process since she was being forced to proceed pro se. The documents filed by legal representatives of the IRS repeatedly stated that they were of the opinion that Petitioner did not understand what she was doing.

There are many documents which reflect these concerns. For the Court's convenience, the Petitioner has included some examples in the Appendix. Please refer to all documents filed by Petitioner and Respondent in both Courts for a full picture of the difficulty there was presenting this case pro se.

Please see the following references to the Appendix which outline the facts concerning why lack of legal assistance/advice caused detrimental results for the Petitioner and show part of the good faith effort the Petitioner put forth in an effort to comply with the requirements of the courts:

> App. 10 – Respondent's admission that the method used by the IRS caused Petitioner to lose the benefit granted her in the Remand from the U.S. Court of Appeals for the Fourth Circuit.
>
> App. 11 – Example of request for legal clarification being ignored by the Clerk of the Court.
>
> App. 12-13 - Petitioner's noting that she did not understand the extent of the information that should have been presented and the realization of that fact as a result of receiving the Appellee's Brief.
>
> App. 14-20 – Petitioner's presentation of information as noted above – examples of problems caused as a result of legal advice/ representation not being available.
>
> App. 22-25 – Additional examples and statements concerning the changes in the laws that govern this case.

The difficulty of understanding and adhering to the complex tax laws is exemplified by:

1. The extremely low number of cases that result in victory for the person who challenges the IRS in any court; and

2. The large number of individuals who are in the major government positions in this country *e.g.*, members of the President's cabinet, making errors in their taxes, despite the fact that they have access to the best business and legal representation that is available.

The complexity of the Tax Laws is exemplified by this case, in which there was a partial remand by the United States Court of Appeals because the IRS itself was not correct in its denial of the Petitioner's right to receive a deduction allowance on her taxes for the fees paid to the attorney. These incorrect procedures by the IRS were the cause of the beginning of this entire case and perpetuated it for years.

The issue of availability of legal advice/ representation is an issue that perpetuates itself because it is the lack of ability to proceed in a legally appropriate and sufficient manner that prevents those subjected to it from being capable of bringing it before the Courts.

Finally, there is a reference on the Notice of Judgment from the U.S. Court of Appeals for the Fourth Circuit which gives instruction for "VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL". I was repeatedly told that said appointment or assignment of counsel was not available. What circumstances allow for this provision to the Petitioner?

REASONS FOR GRANTING THE PETITION

This Court should grant the Petition and provide – or order a court that was involved in this case earlier to provide – the legal advice and/or representation that is necessary to assure that the Petitioner is not denied her legal rights. The Petitioner has shown good faith and valiant effort at each step of this process and has worked diligently to do what she could to follow the legal procedure necessary to present her case. The Petitioner has also pointed out repeatedly that, without advice or assistance, she was unable to present her case to the various courts in a way that fully preserved her rights.

CONCLUSION

This Court should grant the writ of certiorari and simultaneously provide – or order the provision of – the legal advice or assistance necessary to insure her rights do not continue to be denied or violated.

Respectfully submitted,

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410-213-1858

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1066

DEBORAH A. MESSINA,

Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Appeal from the United States Tax Court. (Tax Court No. 04-10926)

Submitted: September 28, 2009 Decided: October 8, 2009

Before MOTZ, KING, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Deborah A. Messina, Appellant Pro Se. Sara Ann Ketchum, Robert W. Metzler, UNITED STATES

DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In a prior appeal, we upheld the Commissioner's determination of a deficiency in Deborah Messina's 1994 income taxes. However, based on the Commissioner's concession that, subject to certain limitations, Messina was entitled to a deduction under 26 U.S.C. § 212(1) for the contingency fee paid to her attorney, we vacated in part and remanded the case to the tax court with instructions for that court to recompute Messina's tax deficiency and penalties after affording her the deduction. The tax court has since adopted the Commissioner's computation of Messina's 1994 income tax liability and penalties for 1994, finding that the computation reflects this court's mandate.

Messina filed this appeal from the tax court's orders upholding the Commissioner's determinations of a deficiency in her 1994 income taxes and additions to tax and denying her motion to vacate that order. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the tax court. *See Messina v. Comm'r, IRS,* Tax Ct. No. 04-10926 (U.S.T.C. June 24, 2008 & filed Sept. 25, 2008; entered Sept. 26, 2008). We dispense with

oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED.

FILED: October 8, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1066
(04-10926)

DEBORAH A. MESSINA,

Petitioner-Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee

JUDGMENT

In accordance with the order of this Court, the judgment of the Tax Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES TAX COURT
Washington, D.C. 20217

DEBORAH A. MESSINA, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	Docket No. 10926-04

DECISION

On October 15, 2007, the Court filed the mandate in this case of the United States Court of Appeals for the Fourth Circuit (Court of Appeals' mandate). On January 8, 2008, the parties filed a supplemental stipulation of facts. On March 24, 2008, respondent filed respondent's computation for entry of decision (respondent's computation), which respondent served on petitioner on March 21, 2008. On March 24, 2008, petitioner filed an objection to respondent's computation (petitioner's objection). Thereafter, the Court ordered the parties to make various filings relating to petitioner's objection.

The Court concludes that the parties' supplemental stipulation of facts and respondent's computation reflect the Court of Appeals' mandate. After due consideration and for cause, it is

ORDERED and DECIDED that for the taxable year 1994 there are due from petitioner the following

deficiency in, and additions to, petitioner's Federal income tax (tax):

	Additions to Tax Under I.R.C. Sections		
Deficiency	6651(a)(1)	6651(a)(2)	6654(a)
$56,888	$7,283.25	$0	$1,342.11

(Signed) Carolyn P. Chiechi
Carolyn P. Chiechi
Judge

ENTERED: JUN 24 2008

FILED: December 29, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1066
(04-10926)

DEBORAH A. MESSINA,

Petitioner-Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee

ORDER

The Court denies the petition for rehearing.

Entered at the direction of the panel: Judge Motz, Judge King, and Judge Shedd.

FOR THE COURT

/s/ Patricia S. Connor, Clerk

UNITED STATES TAX COURT

Deborah A. Messina,	:	
Petitioner,	:	
v.	:	Docket No. 10926-04
COMMISSIONER OF INTERNAL REVENUE,	:	Judge Carolyn P. Chiechi
Respondent.	:	

MOTION TO VACATE THE COURT'S DECISION ENTERED ON JUNE 24, 2008

On August 25, 2008, the Honorable Carolyn P. Chiechi, Judge, of the Honorable U.S. Tax Court issued an Order – after numerous filings, letters and other communication – vacating the Order of July 22, 2008 and stating that on or before September 8, 2008, the petitioner shall file any motion to vacate decision entered on June 24, 2008. The following is submitted to comply with that Order:

The Decision entered on June 24, 2008 concluded that the parties' supplemental stipulation of facts and respondent's computation reflect the Court of Appeals mandate. The Court of Appeals Order, issued July 16, 2008 states repeatedly that petitioner should be allowed to deduct the attorney's fee and transcription costs; however, it does not state the type of deduction that should be used to compute the petitioner's new taxes for 1994.

This was the result of the Petitioner pointing out that (a) The check for this income was issued to Petitioner AND her attorney and (b) that imposition of income tax on petitioner for the portion of the check which belonged to her attorney would result in income tax being paid on the same funds by two different individuals. (Double taxation of same funds) Other facts presented by the petitioner were also taken into consideration by the Court of Appeals in issuing this Order.

It is only stated in documents prepared by the respondent that this deduction must be the type of deduction they chose. In fact, in the respondent's Response to Motion to Vacate Decision dated July 18, 2008, respondent states "4. Petitioner has already appealed the original decision of this Court, entered on May 16, 2006. It was that appeal that resulted in the mandate of the United States Court of Appeals for the Fourth circuit for entry of a decision reflecting petitioner's entitlement to claim attorney's fees as an itemized deduction in 1994. Respondent therefore presumes that the Motion is based on a dispute as to whether the Decision complies with the mandate of the Court of Appeals."

The petitioner does dispute that the Decision complies with the mandate of the Court of Appeals, which is incorrectly stated in respondent's Response. The remand from the Court of Appeals does NOT state "as an itemized deduction". The petitioner notes that on the IRS Instructions for Miscellaneous Deductions (Form 1040 Instructions and Publication 529), it clearly states that this type of expense does not meet the requirements of a Miscellaneous Deduction.

The petitioner suggests that there were several other ways that the mandate of the U.S. Court of Appeals could have been met, since the way chosen by the Internal Revenue Service does not comply with the mandate of the Court of Appeals nor does it fit within the constraints of their own rules.

One possible resolution would be to enter the income from the check as an income on Form C – placing the two recipients of the check in a "joint venture" category. This would allow the full deduction for the expenses (the attorney's fees and the transcription costs – which others claimed as income and upon which they paid taxes) and the net income could be included on the Form 1040 – line 12 – and added to petitioner's other income.

The petitioner suggests that there may be other ways to meet the mandate of the U.S. Court of Appeals by using other means of deduction on the Internal Revenue Service fax computation form and that she (acting pro se) should be entitled to some assistance in identifying those options and correctly computing the revised tax forms.

In the respondent's own words –

1. The Respondent's AMENDED RESPONSE TO NOTICE OF OBJECTION TO COMPUTATION FOR ENTRY OF DECISION clearly states " . . . 'Adding the Excess Miscellaneous deductions' into the computation causes petitioner to lose the benefit of deducting her legal fees."

The petitioner respectfully requests that all information contained in all previous documents be made a part of this Motion – for purposes of not having to repeat all that information and be a paperwork burden to the Court. However, if the Honorable Court would prefer that all the past information be provided in detail, the petitioner will gladly comply with the Court's request.

The petitioner respectfully requests that the Honorable Court vacate the decision entered dated June 24, 2008 and order that the computations be changed to reflect a means of granting petitioner the deductions as outlined in the mandate of the U.S. Court of Appeals remand and which computations better meet the intent of that remand.

[The petitioner also points out the request for clarification of information provided by the Court's Director of Legal Services regarding deadlines for appeals to the U.S. Court of Appeals and asks that the Court assure that the information requested is provided. Details are contained in the letter to the Clerk of Court which forwarded this document.]

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Docket No. 10926-04

September 7, 2008

09-1066 Messina v. Commissioner, IRS 04-10926

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DEBORAH A. MESSINA,	
PETITIONER-APPELLANT	
V.	**DOCKET NO.: 09-1066**
COMMISSIONER OF INTERNAL REVENUE SERVICE,	
RESPONDENT-APPELLEE	

RESPONSE TO APPELLEE'S BRIEF

I. **Jurisdiction**

A. What is name of the agency from which you are seeking review? **U.S. Tax Court**

B. What is the date (s) of the order or orders you are challenging? **June 24, 2008 as Affirmed September 25, 2008.**

II. **Issues on Review**

STATEMENT BY APPELLANT

This statement is being made in an effort to set forth the Appellant's current position and to make her response, which follows, clear.

After receiving a copy of the Appellee's Memorandum Brief, the Appellant realized that in her brief, she should have gone back to the beginning of

this case and summarized it. I apologize to the Honorable Court for not knowing this. In order to prevent unnecessary repetition, Appellant will make note of only the parts of the Appellee's Memorandum with which Appellant disagrees with or has questions about or cannot understand.

It is necessary to state that it is clearer to Appellant at this point (although it has become increasingly clear throughout this entire process that she is in a position which is well "over her head" in terms of understanding the legalities and legal references that are a major part of this case the Appellee's Memorandum. This is in spite of the fact that huge numbers of hours have been spent and a great deal of effort has been made to reach clarity and understanding.

The complexity and procedural requirements of this case have placed inappropriate responsibilities on the Appellant which have – in some cases caused – and have majorly contributed to the deterioration of her health. Her health problems are all directly related to auto immune system and the primary cause is identified medically as "stress". The decision in this case will determine if I (and my husband – since he is dependent on me) will live homeless for the duration of our lives. Obviously, I had to do what I could to pursue this case despite the lack of legal assistance and the detrimental effect on my health.

Appellant has attempted to follow the order of the Appellee's Memorandum Brief as she responds with the following statements:

The Appellee states that I admitted that taxation of the settlement payment was ultimately (my) responsibility. Appellee does not explain that the statement by Appellant continued to state that consideration must be given to the fact that she reasonably relied to her detriment on advice from a variety of government officials and, therefore, should not be held solely responsible for the procedures that were followed. This statement indicated simply that I knew it was appropriate for me to be held accountable for answers regarding the procedures that were used regarding the income but did not indicate that I admitted that the income was solely my responsibility. The statement regarding spreading the "income" over 9 years is emphatically preceeded by an IF.

If statements made by me were not as clear as they should have been during the trial, consideration should be given to the fact that during the previous day's hearing Honorable Judge Chiachi [sic] – stated "I will try to schedule you as late in the scheduling as I can." (Transcript from January 9, 2006 – Page 6 – Line 14.) This was the result of explanation of my overall situation – that I had to drive over 3 hours each way between my home and the Court and that it was necessary for me to go home the night of January 9, 2006, for personal (disabled husband) and preparation for trial reasons (additional paperwork required which had to be retrieved from home).

Despite Her Honor's statement, when we were all called back into Court to be informed of the scheduling upon which the Honorable Court had decided (about 3:30 pm to my best recollection), the Court announced that I would be the first case heard – the next morning – and that the Court would be scheduled earlier than usual to begin at 8 am. I immediately attempted to remind the Court of the earlier statement by Her Honor but was told to see the Clerk after all scheduling was announced. I spoke with three different officers of the Court to remind them of my case and plead for a later date and/or time. I was told that it would be in my best interest to just be there ready for trial at the time scheduled. As a result of this, my exhaustion the next morning detrimentally affected my ability to testify on my own behalf with clarity., and my ability to act as my own attorney pro se.

In addition, much of the information I had to present was based on the fact that Mr. Ober had been subpoenaed. To me, that meant that he had to be there. Her Honor validated that this was a valid assumption (see Transcript of January 10, 2006 Page 5 – Line 13 to Page 6 – Line 8). Although I could have asked for enforcement of the subpoena (I think) it was too late. So when I found out he would not have to respond to his subpoena, it was too late to do anything about it. His testimony, which was vital to my case, could not be presented.

The Appellee points out part of the testimony of Mr. Luca and Appellant would like to add the following:

Mr. Luca was a 17½ year employee of the IRS – Transcript of January 10, 2006 – Page 16 – Line 15 – I would like to point out the confusing nature of both the document associated with Mr. Luca's testimony (Attachment A) and the testimony itself (Transcript of January 10, 2006 – Page 15 – Line 11 through Page 25 – Line 22). I would also point out that at the beginning of this section of the transcript it is clear that Mr. Luca's appearance was not previously known to the Court nor to the Appellee.

Mr. Luca's communication is a typical example of how confusing it can be (as even evidenced by the questions posed by the Honorable Court) to understand legal requirement and procedural information from the IRS.

In this same regard, I have repeatedly asked – throughout every level of IRS and Court involvement – how the IRS can claim that I did not file a return for that year when I have a document (Attachment B) from them that clearly states that they reviewed (and revised) the return I sent to them. The above question has never been answered. It also raises the question – which I was attempting to ask during the trial – Is this letter indicated anywhere on the document Mr. Luca used to testify and which was entered as evidence?

The Tax Court has stated that it appears that taxpayer does not understand, or is unwilling to acknowledge (facts about the law and this case). It is true that this taxpayer cannot acknowledge facts which

she does not understand and that has been the basis upon which she has pled for assistance throughout this case. Although I am told that the Court is not mandated to provide legal counsel, is it prevented from doing so if the taxpayer has made an honest and huge effort to proceed pro se?

Taxpayer (appellant) notes the difference between provision of legal counsel and procedural guidance that was needed. This was acquired on some issues – after extensive effort – and was simply not provided in many pieces of the various phases of this case. Appellant is able to provide a group of contemporaneous, chronological notes from various efforts to obtain even very small pieces of procedural guidance on various stages of this case.

One prime example of this revolves around the issue of this case concerning the recomputation of the taxes after the partial remand from the United States Court of Appeals. In the course of developing this information, the Appellant was asked what additional deductions she had in addition to the attorney's fee. She asked the question repeatedly – What is allowed to be deducted? No one ever provided an answer to that question, making it impossible for the Appellant to compile a list of those deductions.

In view of Appellant's lack of understanding of the legalities in this case, as stated by the Tax Court, the last pages of the Appellee's Memorandum are not understood. In order to express the other points I have but not being able to do it as a direct response to

statements and references not understood, I will simply make those statements as best I can. They follow:

- Appellant questions if the cases referred to in the points made by the Appellee are the exact same situation as Appellant's case. The following is an example of just one of the possible differences:

In the referenced cases, was the check in question (which constituted income) made out to both the taxpayer AND the attorney?

- Even though the American Jobs Creation Act of 2004 does not specify that it IS retroactive, is there anything which prevents the Honorable Court from applying it retroactively in cases which merit that consideration?

- Why is it that a taxpayer who is proceeding pro se will provide lengthy statements to the Court, but the Court's decision is not and cannot be explained to that taxpayer? A one-sentence decision does not assist a taxpayer in understanding the law or where they erred.

- Why is communication with representatives of the Courts so restricted when a taxpayer proceeding pro se requires at least procedural guidance and explanation?

- Why is it that taxpayers (with an attorney or pro se) have decisions in their favor in such a minuscule number of cases both in the U.S. Tax Court and in the U.S. Court of Appeals

on Tax Court cases? No disrespect intended toward the Honorable Courts. The Appellant continues to proceed with the utmost respect for the Honorable Courts.

- The Appellant understands (perhaps incorrectly in view of her inability to understand all the legal information put forth by the Appellee) that the Tax Court does not have the ability to appoint counsel because "the Tax Court is not a 'court of the United States'". Is this also true of the U.S. Court of Appeals?

- The Appellant thanks the Honorable Courts for their patience with Appellant as she continues to proceed pro se.

- Although Appellee states that Appellant was given numerous opportunities to respond to the Commissioner's computations", Appellant was still not afforded the legal procedural guidance she required in order to provide legally adequate responses. Examples of that have already been explained earlier in this document.

- How can it be deemed fair to Appellant that – although the Appellee has used a long list of tax and legal professionals to pursue this case – she is not entitled to any legal assistance whatsoever?

- Is Appellant to understand that it is legal for two individuals to pay income tax on the same income that was shared by them? Since the law has been changed to prevent this,

doesn't that mean that previous determinations in conflict with the changed law were wrong? Are there similar examples of this "double taxation of same income" in other cases both within and without the U.S. Tax Court cases or are they the only cases in which this happens?

- Is it correct – as it has appeared to Appellant – that the Appellee's legal representatives may file documents electronically with the Honorable Court but that this option is not equally presented as available to Appellant acting pro se?

- Is there any legal information resource available to individuals who have no choice but to proceed pro se in tax cases and about which the Appellant does not know?

If this document is in any way inappropriate or unacceptable to the Honorable Court, Appellant apologizes to the Honorable Court and reiterates that she is simply doing the only thing she knows to do given the legal limitations she has, the health situation she has, and the importance of the outcome of this case to her and her husband's life.

Based on the above statements, the Appellant throws herself "on the Mercy of the Honorable Court" as this case is decided. The Appellant requests a Decision that allows for a more favorable opportunity to the Appellant who has never intentionally not complied with the IRS procedures and who continues to proceed with all her ability – pro se. The Appellant

thanks the Honorable Court for its time and consideration.

IV. **Prior Appeals**

A. Have you filed other appeals in this court?

xxx Yes _____ No

Deborah A. Messina v. Commissioner of Internal Revenue – Docket No. 06-1940 – Decision – Affirmed in Part; Vacated and Remanded in Part

_____
Deborah A. Messina

_____
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REQUEST FOR REHEARING IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT BY PETITIONER-APPELLANT

(Filed Nov. 23, 2009)

Docket No. 09-1066 06-1940
Messina v. Commissioner, IRS 04-10926

November 20, 2009

TO THE HONORABLE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

INTRODUCTION

The Appellant respectfully requests a Rehearing on the above-referenced case. This introduction must contain a statement that, in counsel's judgment, one or more of the qualifying situations that allow for this request exist. In view of the fact that this Appellant is proceeding pro se, she will make the statement required based on her own judgment. That is presented as follows:

Appellant contends that a material factual or legal matter was overlooked because none of the questions in her Response to Appellee's Brief were addressed.

Appellant contends that a change in the law occurred after submission of the case and was overlooked. The law regarding how deductions of this kind are to be handled was changed to a procedure which allows an actual reduction of income rather than claiming the attorney's fees, etc., as a miscellaneous deduction.

Since the law regarding deduction of attorney's fees has been changed and is – according to the IRS attorney – not retroactive – (I still contend that the law does not prevent the new procedure from being applied retroactively but simply says that it is not automatically applied retroactively) – the IRS should be required, in its recomputations, as mandated by the U.S. Court of Appeals, to at least follow the purpose of the revision of the law which revision shows that the old law was incorrect.

In other words – if the law was changed – it had to be considered to be incorrect or it would not have been changed – and any recomputation based on that law should be done in a way that reflects the new law, which corrected the old law. This is NOT applying the new law retroactively but is respecting the revision of the old law since changing it serves to prove that it was incorrect.

When you are able to honor an individual's rights as corrected by law, why would you use a method that was deemed incorrect to apply to that individual and overlook the correction of the procedure which protects that individual's rights? Further, the Appellee has previously – in this case – been judged to be incorrect in their procedures vis a vis the Remand and recomputation ordered by this Honorable Court. This shows that the Appellee is susceptible to error and that there can be computation errors on their part in cases which involve this situation. This Appellant – through no fault of her own – was without any legal assistance – and needed the very gracious

assistance of the Appellee's attorney in making the point that resulted in that Remand. It further shows the extent of the complicated nature of this law and the difficulty with understanding it.

Appellant contends that it is probable that the decision conflicts with a decision of the U.S. Supreme Court, this Court, or another Court of Appeals, and the conflict could not be addressed because the appellant lacks the benefit of any type of legal assistance through no fault of her own and despite varied attempts to procure that legal assistance. Further information about this fact is contained in appellant's Response to Appellee's Brief.

Appellant contends that this case involves questions of exceptional importance to the appellant – and to future individuals who find themselves in similar situations through no fault of their own – as the decision dictates the quality of life she (and perhaps others) will have as a result of actions that will be mandated by that decision. Further, this case shows the difficulty an individual would have in attempting to pursue their legal rights given the current restrictions placed on that individual by the previous law – which has now been changed and to the benefits of which change the individual should be entitled.

Surely the decision which results in the appellant (and her husband) living either independently for the remainder of their lives or living dependent on government assistance for the remainder of their

lives can be considered to [sic] of exceptional importance. This is especially true when it is noted that these two individuals worked hard and planned for a total of 110+ years in order to live in self sufficiency for the remainder of their lives. As evidenced by the fact that even the Commissioner did not have the facts completely correct in the application of the laws involved in this case, surely it can be understood that the Appellant did not intentionally apply the law in a way that has subsequently been determined to be incorrect. This is further amplified by the fact that the law has since been changed.

The other question which has been asked from the beginning and never answered – and which is of exceptional importance – is how the Commissioner can claim that no return was filed for the year 1994 when documents from that Commissioner clearly state that the return had been received and reviewed.

Therefore, the appellant requests that a Rehearing be granted on this case in order to address the above.

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